

REMARKS

Claims 16, 18, 19, and 21 to 45 are now pending in the present application.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicants thank the Examiner for acknowledging the claim for foreign priority, and for indicating that all certified copies of the priority documents have been received.

Claims 32 to 45 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

While the subject matter rejections may not be agreed with, to facilitate matters, claim 32 has been rewritten to better clarify the claimed subject matter. For example, claim 32, as presented, recites *a method for procuring a service using at least one stationary physical server and a plurality of devices accessible to subscribers*. Claim 32, as presented, positively recites the machines that accomplish the method operations, include the *at least one stationary physical server and the plurality of devices accessible to subscribers*. Withdrawal of the rejections of claims 32 to 45 is therefore respectfully requested.

Claims 16, 18 to 19, and 21 to 31 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

While the subject matter rejections may not be agreed with, to facilitate matters, claim 16 has been rewritten to better clarify the claimed subject matter. For example, claim 16, as presented, includes the features in which *the at least one server is configured to compare transportation requests to transportation offerings, the transportation requests being information communicated to the server from at least one device accessible to interested parties, the transportation offerings being information communicated to the server from at least one device accessible to suppliers, in which the at least one server is configured to determine whether any transportation requests match any transportation offerings, and, if there is a match, to communicate the match to a device accessible to interested parties*. Withdrawal of the indefiniteness rejections of claims 16, 18 to 19, and 21 to 31 is therefore respectfully requested.

Claims 16, 18 to 19, 23 to 27, 29 to 34, 37 to 41, and 43 to 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0186144 (“Meunier”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

While the obviousness rejection may not be agreed with, to facilitate matters, claim 16 has been rewritten to better clarify the claimed subject matter.

Claim 16, as presented, includes the feature in which *the transportation offerings include a starting point, a destination point, and intermediate route information, in which the at least one server takes into account the intermediate route information.*

As recognized by the Final Office Action, the “Meunier” reference does not disclose (nor even suggest) intermediate route information. Therefore, the “Meunier” reference does not render obvious claim 16, as presented.

For at least the reasons stated above, claim 16 is allowable, as are its dependent claims.

Claim 32 includes features like those of claim 16, and it is therefore allowable for essentially the same reasons, as are its dependent claims.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, pending claims 16, 18, 19, and 21 to 45 are all allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all pending and considered claims 16, 18, 19, and 21 to 45 are in condition for allowance. It is therefore respectfully requested that the rejections and objections be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

Dated: 1/19/2010

By: 

Gerard A. Messina
(Reg. No. 35,952)

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646